

NATURAL RESOURCES CODE
CHAPTER 133. QUARRY SAFETY
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 133.001. SHORT TITLE. This chapter may be cited as the Texas Aggregate Quarry and Pit Safety Act.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.002. PURPOSE. The Legislature of the State of Texas finds that:

(1) protection of the public good by requiring safety devices for certain aggregate quarries and pits and regulation of public access to such aggregate quarries and pits, with reasonable, fair, and certain laws, accompanied by civil penalties for failure to obey such laws, are essential to protect the public good and welfare;

(2) to carry out the stated purpose of this Act, a method must be provided to secure usable information concerning the definition, existence of, operation of, and abandonment of aggregate quarries and pits;

(3) to provide for a centralized, easily understood method of requiring safety devices and the administration thereof by one agency of this state to the exclusion of any other governmental entity is essential to the smooth workings of any law having statewide impact.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.003. DEFINITIONS. In this chapter:

(1) "Abandoned" means having relinquished all right, title, claim, and possession with the intent of never again claiming a future right or title or resuming possession.

(2) "Aggregates" includes any commonly recognized construction material originating from a quarry or pit by the disturbance of the surface, including dirt, soil, rock asphalt, clay, granite, gravel, gypsum, marble, sand, shale, stone, caliche, limestone, dolomite, rock, riprap, or other nonmineral substance.

(3) "Barrier" means an object of substantial construction that will obstruct, restrain, and prevent the normal passage of persons or vehicular traffic and may include guardrails, fences, or berms or barricades composed of consolidated material or overburden.

(4) "Berm" means a ridge of refuse, overburden, consolidated material, or other material in a lengthened elevation designed to act as a dike or barrier, capable of moderating or limiting the force of a vehicle in order to impede the passage of the vehicle.

(5) "Commission" means the Railroad Commission of Texas.

(6) "Consolidated material" means material of sufficient hardness or ability to resist weathering and to inhibit erosion or sloughing.

(7) "Division" means the Surface Mining and Reclamation Division, Railroad Commission of Texas, or such department, bureau, or commission as may lawfully succeed to the powers and duties of such division.

(8) "Director" means the director, Surface Mining and Reclamation Division, Railroad Commission of Texas, or the director's representative.

(9) "Federal act" means the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), and any amendment thereof.

(10) "Fund" means the abandoned mine reclamation fund established pursuant to Section 401 of the federal act, and any amendment thereof.

(11) "Guardrail" means a system of posts and metal rails as defined by the Texas Department of Transportation.

(12) "Inactive quarry or pit" means a site or any portion of a site that although previously in aggregate production is not currently being quarried by any ownership, lease, joint venturer, or some other legal arrangement.

(13) "In hazardous proximity to a public road" means that distance beginning 200 feet from the nearest roadway edge of a public road or highway to the pit perimeter.

(14) "Operator" means any person, partnership, firm, or corporation engaged in and responsible for the physical operation and control of the extraction of aggregates.

(15) "Overburden" means all materials displaced in an aggregate extraction operation that are not or reasonably would not

be expected to be removed from the affected area.

(16) "Owner" means any person, partnership, firm, or corporation having title, in whole or in part, to the land on which an aggregate operation exists or has existed.

(17) "Pit" means an open excavation not less than five feet below the adjacent and natural ground level from which aggregates have been or are being extracted.

(18) "Public road or right-of-way" means every way publicly maintained or any part thereof as defined by Section 541.302, Transportation Code, and the decisions thereunder.

(19) "Quarrying" means the current and ongoing surface excavation and development without shafts, drafts, or tunnels, with or without slopes, for the extraction of aggregates from natural deposits occurring in the earth.

(20) "Quarry" means the site where aggregates are being or have been removed or extracted from the earth to form the pit, including the entire excavation, stripped areas, haulage ramps, the land immediately adjacent thereto upon which the plant processing the raw materials is located, exclusive of any land owned or leased by the responsible party not being currently used in the production of aggregates.

(21) "Refuse" means all waste material directly connected with the production, cleaning, or preparation of aggregates that have been produced by quarrying.

(22) "Responsible party" means the operator, lessor, or owner of lessee as may be subject to the provision of Chapters 2 and 3 of this Act.

(23) "Ridge" means a lengthened elevation of overburden created in the aggregate production process.

(24) "Roadway" means the part of the public road intended for vehicular traffic that consists of an improved driving surface constructed of concrete, asphalt, compacted soil, rock, or other material.

(25) "Setback distance" means from the outer right-of-way line of a public road or highway up to a distance of 25 feet.

(26) "Site" means the tract of land on which is located a pit and includes the immediate area on which the plant used in the extraction of aggregates is located.

(27) "Unacceptable unsafe location" means a condition where the edge of a pit is located within 200 feet of a public roadway intersection in a manner which, in the judgment of the commission:

(A) presents a significant risk of harm to public motorists by reason of the proximity of the pit to the roadway intersection; and,

(B) has no naturally occurring or artificially constructed barrier or berm between the road and pit that would likely prevent a motor vehicle from accidentally entering the pit as the result of a motor vehicle collision at or near the intersection; or which,

(C) in the opinion of the commission, is also at any other location constituting a substantial dangerous risk to the driving public, which condition can be rectified by the placement of berms, barriers, guardrails, or other devices as prescribed by this code.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 165, Sec. 22(56), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.231, eff. Sept. 1, 1997.

SUBCHAPTER B. AUTHORITY OF COMMISSION

Sec. 133.011. GENERAL AUTHORITY OF THE COMMISSION. To accomplish the limited purposes of this chapter, the commission may:

(1) with proper notice to all parties affected, adopt rules and regulations consistent with the provisions of this chapter and issue orders necessary to implement and enforce this chapter;

(2) conduct research necessary for the discharge of its duties under this chapter;

(3) collect and make available to the public information relating to the inventory and classification of quarries, including maps and other technical data;

(4) apply for, accept, receive, and administer grants,

gifts, loans, or other funds from any source; and

(5) hold public hearings, take written sworn testimony, hear witnesses upon oath, and consider reports in regard to the classifications of pits within the definitions of hazardous proximity to a public road and unacceptable unsafe location, issuing rules and orders in relation thereto.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.012. INVENTORY OF ACTIVE, INACTIVE, AND ABANDONED QUARRIES AND PITS. (a) The commission shall inventory, classify, and maintain a log according to the degree of hazard, proximity to public roads, age, and current use of all existing, inactive, or abandoned quarries that have a pit perimeter that is in hazardous proximity to a public road, and those pits that are in an unacceptable unsafe location.

(b) The commission shall keep a current log of all quarries that are required to be inventoried under Subsection (a) of this section, including such quarries and pits for which initial operations begin after June 30, 1991.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.013. DETERMINATION OF STATUS. After notice and hearing, the commission may determine whether a quarry or pit has been abandoned, is active, or is inactive.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

SUBCHAPTER C. PERSON RESPONSIBLE FOR QUARRY OR PIT

Sec. 133.021. PERSONS RESPONSIBLE FOR QUARRY OR PIT. (a) For the purposes of this chapter, the person responsible for a quarry or pit is the current operator of the quarry or pit, except that if a quarry or pit was abandoned on or before January 1, 1991, or became inactive before that date and has not resumed operations, or if no operator exists, then the owner in which the pit exists is the person responsible.

(b) Where a conflict arises in identifying a person responsible for the pit, the commission may hold a public hearing.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

SUBCHAPTER C-1. INITIAL REPORTING REQUIREMENTS

Sec. 133.031. REPORT OF ABANDONED OR INACTIVE QUARRY OR PIT. (a) On or before March 1, 1992, the person responsible for an abandoned quarry or pit shall report to the commission.

(b) On or before March 1, 1992, the person responsible for a quarry or pit that became inactive before January 1, 1991, and did not resume operations before June 30, 1991, shall report to the commission.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.032. REPORT OF AN ACTIVE QUARRY OR PIT. On or before October 1, 1991, the person responsible for a quarry or pit that is active on June 30, 1991, shall report to the commission.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.033. FORM AND CONTENT OF REPORT. (a) Each report under this chapter must show the location, age, operational status, and current use of the quarry or pit to which the report applies, and the report form shall be concise and limited to the information necessary to effect the inventory, and be of not more than five pages, containing only the information prescribed in Section 133.046 of this code.

(b) Only a single report under this subchapter is required when joint owners or operators or a combination of either exists.

(c) Only a single report under this subchapter is required for each owner or operator having multiple pit locations within the state.

(d) Only one accurate report relating to each quarry or pit is required by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

SUBCHAPTER D. SAFETY AND CERTIFICATION

Sec. 133.041. BARRIERS REQUIRED. (a) A person responsible for an active pit must construct a barrier or other device required by this code between a public road adjoining the site and a pit, provided the pit is in hazardous proximity to the public road.

(b) A person responsible for an abandoned or inactive pit must construct a barrier or other device required by this code between a public road adjoining the site and the pit, provided that the pit is in hazardous proximity to a public road and in an unacceptable unsafe location. The commission may grant a waiver from the barrier requirement if the person responsible for the abandoned or inactive pit submits an application to the commission showing that:

(1) a governmental entity obtained a right-of-way and constructed a public road within 200 feet of the abandoned or inactive pit before August 26, 1991; and

(2) the pit has remained abandoned or inactive since the road was constructed.

(c) The responsible party may choose to slope the sidewalls of a pit in place of constructing a berm or barrier, provided that in the opinion of the responsible party such corrective measure better serves the public safety and provided that the slope shall not exceed 30 degrees from the horizontal.

(d) The barrier or other device must be completed not later than the 90th day after the day on which the person responsible for the quarry or pit receives a notice of approval under Section 133.048(b) of this code. An additional time of not more than 60 days may be granted by the commission for good cause shown. If the responsible person must obtain an easement before constructing the barrier or other device, the commission may grant additional reasonable time to complete the barrier or other device.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 2, eff. Sept. 1, 1993.

Sec. 133.042. CONSTRUCTION STANDARDS. (a) A barrier constructed under Section 133.041 of this code must:

(1) reach a height that the commission determines that under the circumstances will obstruct, restrain, and prevent the normal passage of vehicular traffic;

(2) be of substantial construction suitable for impact under normal driving conditions; and

(3) have openings to the extent necessary for travel on the premises and for public road drainage, although such drainage paths must be covered with protective material, substantial enough to turn away motor vehicular traffic that normally travels the adjacent public road.

(b) The commission may not adopt construction standards for barriers under Subsection (a) that are more stringent than the Texas Department of Transportation standards.

(c) In the event the commission determines that the pit location as detailed in the quarry safety plan or other application will contain substantial soil types of such density and other factors that will have a high probability of holding or impounding water, when the pit is operating, inactive, or abandoned, wherein the impoundment of water poses a definite and determinable unreasonable risk to human health and safety as set out in this code, the commission may require the responsible party operating soil, dirt, clay, gravel, sand, caliche and clay pits to slope the sidewalls as an additional requirement to obtain a safety certificate or to alter the berm or barrier.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 3, eff. Sept. 1, 1993.

Sec. 133.043. CONSTRUCTION COSTS. (a) The commission shall adopt and implement rules, standards, or procedures necessary to obtain funds that are or may become available under the federal act, or any federal or state law, for the cost of constructing barriers required by this code.

(b) The person responsible for the pit shall pay the cost of constructing a barrier to the extent that person is unable to obtain funds available under any state, municipal, or federal source.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.044. PROHIBITION AGAINST OPENING PITS. (a) From and after November 1, 1991, no person responsible may open a new pit on a site for the extraction of aggregates in this state wherein the pit perimeter will be less than 25 feet from the outer right-of-way line of any public road or highway ("the setback distance").

(b) From and after November 1, 1991, no person responsible may open a new pit on a site for the extraction of aggregates in this state wherein the pit perimeter is in hazardous proximity to a public road without first filing a quarry safety plan detailing how the applicant intends to comply with the safety provisions of this code in the opening and closing of the pit.

(c) The quarry safety plan must:

(1) set out the information required in Section 133.046 et seq. of this code; and

(2) be filed by the applicant at least 60 days prior to the opening of the pit; and

(3) contain a statement as to the yearly progress of the encroachment of the pit perimeter within the hazardous proximity to a public road, if any, and the type of berm or barrier or other device required by this code that will be erected; and

(4) be in writing, certified and sworn to the applicant; and

(5) contain any other information relating to safety matters as the commission by rule or regulation deems essential to the implementation of this code.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.045. SAFETY CERTIFICATE REQUIRED. (a) A safety certificate is required for an active, inactive, or abandoned quarry or pit that is located in hazardous proximity to a public road or is in an unacceptable unsafe location, excluding an inactive or abandoned quarry or pit that receives a written waiver from the commission.

(b) From and after November 1, 1991, unless a person responsible for a quarry or pit has obtained from the commission a certificate that a quarry or pit complies with this subchapter and rules or orders adopted under this subchapter, and subject to Subsection (c) of this section, the person responsible may not:

(1) open a new pit in hazardous proximity to a public road; and

(2) locate a pit in an area wherein it is in an unacceptable unsafe location; or

(3) reopen, operate, or abandon a quarry or pit that is in hazardous proximity to a public road and in an unacceptable unsafe location; and

(4) provided, however, that the person responsible must have received a notice from the commission that the quarry or pit requires the operator to obtain a safety certificate, before that person is prohibited from operating or maintaining the quarry or pit without a safety certificate.

(c) Any person responsible who, on November 1, 1991, is utilizing a portion of a site for quarrying operations, including the stockpiling, sale, or processing of aggregates or a combination thereof, or who has a current, valid, or outstanding agreement or legal right to develop, utilize, or quarry the property, shall be responsible for obtaining a safety certificate limited to that specific pit area he is using or excavating or intends to use or excavate.

(d) A person responsible for a quarry or pit may operate the pit during a period that is described by Subsection (a) or (c) of Section 133.052 of this code.

(e) In the event a quarry or pit previously not within the proscribed distance in the definition of "in hazardous proximity to a public road" and not initially within the purview of "unacceptable unsafe location" later becomes subject to regulation as the result of an expansion or relocation of an existing public road or construction of a new public road, the person or entity responsible for the expansion or relocation of the existing public road or construction of a new public road shall be liable to report the same to the commission within 90 days of the date the expansion, relocation, or construction is finally accomplished.

(f) The commission shall provide such rules and regulations to require the person or entity responsible for the expansion or relocation to erect berms or barriers.

(g) For the purposes of this subsection, the person or entity responsible for the erection of berms or barriers is that person or entity having the original and initial legal authority and responsibility for the initiation and contracting of the expansion or relocation.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 4, eff. Sept. 1, 1993.

Sec. 133.046. FORM AND CONTENTS OF APPLICATION. (a) The commission by rule shall prescribe the form of an application for a safety certificate.

(b) An application for a safety certificate must contain not more than:

(1) the name, address, and telephone number of the person responsible for the quarry or pit;

(2) the name, address, and telephone number of the owner or owners if different from the person responsible for the quarry or pit;

(3) the type of quarrying activities, if any, occurring on the site;

(4) a brief description of the site, including the acreage outside and inside the pit;

(5) the distance of each pit perimeter from the nearest roadway edge of each public road that the site adjoins and the nearest intersection of any public or private road or driveway;

(6) the depth in feet, below the top of the pit highwall located between the pit and the roadway, of the deepest excavation in the pit;

(7) a description of and a construction plan for any barrier or other device allowed in this code to be constructed, specifying the material to be used and the expected date of completion; and

(8) any other information or condition that, in the opinion of the operator or owner, constitutes an unacceptable unsafe location, as defined or required by this Act that is absolutely essential to the purposes of this Act.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 5, eff. Sept. 1, 1993.

Sec. 133.047. APPLICATION FEE. (a) The commission may require the payment of an application fee.

(b) The commission shall set the fee in an amount reasonably necessary to cover the commission's cost of carrying out this chapter, but not more than:

(1) \$500 for an active aggregate quarry or pit;

(2) \$500 for an inactive or abandoned aggregate quarry or pit unless the responsible party is a governmental entity in which case the fee shall be no more than \$350.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 6, eff. Sept. 1, 1993.

Sec. 133.048. REVIEW OF APPLICATION. (a) Not later than the 10th day after the day on which an application for a safety certificate is received, the commission shall review the application and the plan and determine if each complies with this subchapter, and with rules or orders adopted under this subchapter, and issue such findings and conclusions as may be necessary.

(b) If the application and plan comply with this subchapter, and rules or orders adopted under this subchapter, the commission must approve the application and notify the applicant in writing of the commission's decision.

(c) If the commission determines that an application or plan does not comply with this subchapter and rules or orders adopted under this subchapter, the commission must notify the applicant in writing of the commission's decision, specifying any defects.

(d) Any notices required under Subsections (b) and (c) of this section must be mailed to the applicant certified mail, postage prepaid, return receipt requested, not later than the fifth day after the day on which the commission approves or disapproves the application.

(e) An applicant who receives notice of denial under Subsections (c) and (d) of this section may submit, not later than the 30th day after the day on which the notice is received, a modified application or plan.

(f) Not later than the fifth day after the day on which the commission receives a modified application or plan, the commission must approve or deny the modified application or plan and notify the applicant in writing of the commission's decision.

(g) The commission shall first review applications for sites that have been abandoned and that are within the setback distances.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.049. INSPECTION OF BARRIERS. Within 15 days of the time in which construction of barriers required by Section 133.041 of this code and described in an approved application is required to be completed, the commission may inspect those barriers to determine whether they meet the requirements of this subchapter.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.050. ISSUANCE OF CERTIFICATE. (a) If, after inspection, the commission determines that the barriers described in an approved application conform with the plan and comply with this subchapter, and the rules or orders adopted under this subchapter, the commission must issue a safety certificate to the

person responsible for the pit.

(b) If, after inspection, the commission determines that a barrier does not comply with this subchapter or a rule or order adopted under this subchapter, the commission shall give the applicant written notice of any defects in that barrier and shall allow the applicant a reasonable time, not to exceed 60 days from the day notice is received, to cure the defects.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.051. TRANSFER OF CERTIFICATE AFTER TRANSFER OF TITLE. (a) A person holding a safety certificate has the full right, power, and authority to transfer the certificate upon the sale, lease, or other transfer of title to the site, provided the new owner, operator, lessor or lessee, or party in interest files a written affidavit that:

(1) all barriers between a pit and the nearest roadway edge of any public road comply with this subchapter, and rules and orders adopted by this subchapter; and

(2) there will be no change, on or after the day of the transfer of title or operation, in:

(A) the condition or location of a barrier; and

(B) the distance of a pit perimeter from:

(i) the nearest public road; and

(ii) the nearest intersection of a public road and a private road or driveway.

(b) The transfer affidavit must be filed not later than the 30th day after the day on which the transfer of title to or operation of the quarry or pit occurs.

(c) Except as provided by Section 133.053(a) of this code, the commission must process and approve a transfer of a safety certificate not later than the 10th day after the day on which the commission receives a completed transfer affidavit.

(d) The commission may require the payment of a reasonable fee for processing the transfer affidavit, not to exceed the actual administrative costs of receipt and processing, which amount shall not be more than \$250.

(e) The hypothecating, mortgaging, or other transfer of equitable title or a pledge of any assets to creditors of the operator or owner shall not require the filing of a transfer affidavit.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 7, eff. Sept. 1, 1993.

Sec. 133.052. RECERTIFICATION AFTER TRANSFER OF TITLE. (a) Unless proper transfer affidavit is filed pursuant to this subchapter, or an application for an amended certificate as required by Subsection (b) of this section is pending, an existing safety certificate expires on the 90th day after the day on which a sale, lease, or other transfer of title to or operation of the quarry or pit for which the certificate was issued occurs.

(b) To obtain an amended or new safety certificate, a new owner, operator, lessor, or lessee must submit an application and plan as required by Section 133.046 of this code not later than the 30th day after the day on which the transfer of title to the quarry or pit occurs or a change in the activities of the quarry or pit necessitates.

(c) If an application for a new certificate has been submitted as required by Subsection (b) of this section, the existing safety certificate continues in effect until the commission's decision either approving or disapproving the new or amended certificate is issued and becomes final.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.053. DENIAL OR REVOCATION OF CERTIFICATE. (a) At its option, the commission may not issue or approve the transfer of a certificate to a person who has violated this chapter or a rule or order adopted under this chapter.

(b) The commission may revoke or disapprove the transfer of a safety certificate issued under this subchapter only if, after notice and hearing, the commission determines that the holder of the certificate has violated this chapter or a rule or order adopted under this chapter.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.054. CESSATION OF ACTIVE PIT OPERATIONS. (a) The responsible party who plans or intends to cease active operations in a quarry or pit subject to the provisions of this code shall, 60 days prior to cessation of operations, notify the commission of its

intent and submit any additional plans the operator determines necessary to protect the public good and welfare after the cessation of operations. The commission may charge a fee for the actual costs of processing the notice, which fee shall not exceed \$500.

(b) The commission shall have inspected the quarry and pit within 10 days after receipt of the notice in order to ensure compliance with the provisions of this chapter and any additional plans by the operator as may be submitted pursuant to Subsection (a) of this section.

(c) Upon inspection, the commission shall have 10 days to notify the operator of compliance, or lack thereof, and in the event of compliance shall issue a safety certificate pursuant to Section 133.050 of this code.

(d) In the event of noncompliance, the commission shall follow the procedures as set out in Section 133.048 et seq. of this code.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

SUBCHAPTER E. ENFORCEMENT AND PENALTIES

Sec. 133.081. NOTICE OF VIOLATION; TIME TO CURE. (a) On receipt of a complaint or a violation of this chapter or a rule or order adopted under this chapter or on its own motion, the commission must give the person responsible for the quarry or pit written notice of each alleged violation, including the applicable statutory reference, and rule or order so violated and its relation thereto, and the date, time, and place for a hearing.

(b) If, after notice and a hearing, the commission determines that a violation has occurred, the commission must make written findings of the actual or threatened violation and the required corrective work and shall prescribe by order a specific period, commensurate with the work to be done but not to exceed 90 days from the date of the order, during which the corrective work must be done, unless an extension of time for good cause shown by the person responsible is granted by the commission.

(c) If the responsible party fails to perform corrective work required by the commission under Subsection (b) of this section within 120 days after notice is given to the responsible party, the commission may contract for the corrective work to be done at reasonable, customary, and ordinary costs applicable in the industry. Such costs shall be submitted within 30 days of the date the work is finished, and the responsible party shall have 60 days to pay the costs or appeal the decision. In the event the responsible party fails to pay the costs as presented or fails timely to contest or appeal the costs as presented by the commission, the commission shall have the right to impose such fine or injunction as is warranted, consistent with the provisions of Section 133.082 et seq.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.082. CIVIL PENALTY. (a) A person or responsible party who violates this chapter or a rule or order adopted under this chapter after due notice is liable to the state for a civil penalty of not less than \$500 or more than \$5,000 for each act of violation on a first offense.

(b) A person or responsible party who violates this chapter or a rule or order adopted under this chapter after due notice is liable to the state for a civil penalty of not less than \$1,000 or more than \$10,000 for each act of violation on a second and subsequent offense.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.083. INJUNCTION. (a) The commission may enforce this chapter or a rule or order adopted under this chapter by injunction or other appropriate remedy.

(b) On application for injunctive or other relief and a finding that a person is violating or has violated this chapter or a rule or order adopted under this chapter, a court may grant the injunctive or other relief warranted by the facts.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.084. RECOVERY OF COSTS. A person responsible for a quarry or pit is liable to the state for customary, ordinary, and reasonable costs incurred by the commission in undertaking corrective or enforcement action under this chapter and for court costs and attorney's fees.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.085. PROCEDURE. (a) At the request of the commission, the attorney general shall bring suit for injunctive or

other relief, to recover a civil penalty or costs as provided by Section 133.082 or 133.084 of this code, or for both injunctive or other relief and to recover a civil penalty or costs.

(b) The action may be brought in the county in which the offending action has occurred or in the county in which the defendant resides or has a place of business.

(c) The provisions of this Act supersede any other municipal ordinance or county regulation that seeks to accomplish the same ends as set out herein.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.086. DISPOSITION OF PENALTIES AND COSTS. Money collected under Section 133.082 or 133.084 of this code shall be deposited in the state treasury to the credit of the Texas aggregates quarry and pit safety fund.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.087. COMPLIANCE. Compliance with this Act shall be admissible as evidence in any legal proceeding.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.088. GOVERNMENTAL LIABILITY. The provisions of this act shall not be construed to impose any liability upon a state governmental entity or county, or their officers or employees.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.
Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 8, eff. Sept. 1, 1993.

SUBCHAPTER F. AUTHORITY TO REGULATE QUARRIES AND PITS IN CERTAIN COUNTIES

Sec. 133.091. COUNTY AUTHORITY TO REGULATE. A county with a population of 2.4 million or more may adopt regulations requiring the placement of signs or barriers on aggregate quarries and pits.

Added by Acts 1993, 73rd Leg., ch. 693, Sec. 9, eff. Sept. 1, 1993.

Sec. 133.092. AREA SUBJECT TO REGULATION. A regulation adopted under this subchapter applies only in the unincorporated area of the county.

Added by Acts 1993, 73rd Leg., ch. 693, Sec. 9, eff. Sept. 1, 1993.

Sec. 133.093. CONFLICT WITH COMMISSION RULE. A county may not adopt regulations for aggregate quarries and pits which are regulated by the commission.

Added by Acts 1993, 73rd Leg., ch. 693, Sec. 9, eff. Sept. 1, 1993.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 133.901. DISTANCE BETWEEN PIT AND PROPERTY LINE. (a) Except as provided by Subsection (b), at the time quarrying is completed, the distance from the edge of the consolidated material of a pit that does not have lateral support to the property line of the nearest property that is not owned or leased by the operator may not be less than 50 feet.

(b) This section does not apply:

(1) to a pit if the operator and the adjacent property owner agree that the pit may be located closer to the property line;

(2) to an excavation constructed by a political subdivision to provide drainage or stormwater retention; or

(3) to a county with a population of 3.3 million or more.

Added by Acts 2001, 77th Leg., ch. 1051, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 1017, Sec. 1, eff. Sept. 1, 2003.